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Applicant : GIEFER  
Serial No : 09/600,832  
Filed : July 21, 2000  
For : SLOT COVER...  
Art Unit : 3682  
Examiner : V. Luong  
Dated : September 11, 2002

Hon. Commissioner of Patents  
and Trademarks  
Washington, D.C. 20231

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APPEAL BRIEF

I. REAL PARTY INTEREST

This application is assigned to ZF Lemförder Metallwaren AG.

II. RELATED APPEALS AND INTERFERENCES

Appellant, Appellant's legal representative, or assignee has no knowledge of any appeals or interferences which will directly effect or be directly effected by or have a bearing on the Boards decision in the pending appeal.

III. STATUS OF CLAIMS

Claims 18 - 33 and 35 - 38 stand rejected and are on appeal.

#### IV. STATUS OF AMENDMENT AFTER FINAL REJECTION

An amendment after final rejection was filed August 21, 2002. The Examiner has indicated in the Advisory Action of August 29, 2002 that this proposed amendment will not be entered. Another Amendment is submitted with this Appeal Brief canceling claim 31.

#### V. SUMMARY OF THE INVENTION

The present invention relates to a shifting device of a motor vehicle, and in particular to a slot cover of a shifting device.

Many automobiles have a transmission which can vary the ratio between the rotations of the engine of the vehicle and the rotation of the wheels driven by that engine. Many of the transmissions used in passenger vehicles, and many commercial vehicles, have different modes of operation. The different modes of the transmission are selectable by the operator of the vehicle. The selection of the transmission modes, or gears as they are commonly referred to, is often performed by the movement of a lever often known as the shift or selector lever, page 2 line 10 and page 9 line 18. In the embodiment of the present drawings, the selector lever is shown by reference 8.

The mechanism or kinematics which causes movements of the selector lever 8 to change modes of the transmission, is often delicate and/or unsightly. Therefore a housing or at least a cover plate 6, page 8 line 19, is used to cover kinematics between the shift lever 8 and the transmission. The cover plate 6 then needs an opening or shift/selection gates 7, page 8 lines 19 - 20 for the selector lever 8. The openings or gates 7 need to be large enough to allow the

selector lever 8 to be movable into all the positions that select the different modes of the transmission. These opening or gates 7 expose the kinematics and this is often undesirable because objects and dirt can fall through the gates 7 and disrupt the kinematics. It is therefore often desirable to put a slot cover between the selector lever 8 and the cover plate 6 which can adapt to relative movements between the selector lever 8 and the cover plate 6. A bellows is sometimes used in the prior art, however this is often unsightly and is prone to cracking.

The present invention in particular relates to the slot cover which covers the openings or shift gates 7, while still allowing movement of the selector lever 8. The present invention accomplishes this by a cover plate 6 and a louver guide which is movable connected to the cover plate. In the embodiment of Figure 5, the cover plate is shown by reference 6 and portions of the louver guide are shown by elements or supports 5.1 and 5.2, and are also described in the specification on page 7 lines 1 - 3. Deflecting rollers 3.1 and 3.2 are arranged at ends of the supports 5.1 and 5.2, page 7 lines 3 - 5. A louver 2 which is formed as an endless band is movably connected to the louver guide and guided around the deflecting rollers 3.1 and 3.2, page 7 lines 10 - 19. The louver 2 is preferably formed from a broad band portion 2.1 and narrow bands 2.2 and 2.3. In the embodiment of present Figure 2, the broadband 2.1 is on the top, and the narrow bands 2.2 and 2.3 are on the bottom. The louver 2 surrounds the louver guide. The louver is movably connected to the louver guide so that the louver can move around the louver guide. In the embodiment of Figure 2, the louver moves both clockwise and counterclockwise around the louver guide central plate 5.3.

The selector lever 8 passes through an opening 2.4 in the louver 2, page 9 lines 13 - 14.

The selector lever 8 also passes through an opening 5.4 in the central plate 5.3, page 7 lines 2 - 3. The opening 5.3 is large enough to accommodate the desired movements for the selector lever in a first direction. In the embodiment of Figure 2, this first direction is in the right and left directions. Therefore when the selector lever is moved to the right and left in Figure 2, the louver 2 rotates around the louver guide, especially louver plate 5.3. The louver 2 and the louver guide, therefore cover the openings or shift gates 7 in the cover plate 6, and the movable connection of the louver 2 to the louver guide allows movement of the selector lever in a first direction.

The entire louver and lower guide is then movably connected to the cover plate 6 in a second direction, which is usually considered the sideways direction of a vehicle, page 9 lines 11 - 12. This second or sideways direction is shown in Figure 6 as being from a generally lower left direction to an upper right direction. In one preferred embodiment of the present invention, the louver 2 and the louver guide are supported by the selection lever 8 and moved with the selection lever 8 in the second or sideways direction. The louver guide itself is preferably restrained in the first direction. Movement of the selection lever 8 in the first direction then causes the louver 2 to rotate the louver guide.

In a variation possible with the present invention, the louver 2 can have an elastic portion which keeps the louver 2 tight around the louver guide, page 4 lines 14 - 18. It is Applicant's position that the skill of an ordinary person in the art would be sufficient to form a louver with enough elasticity to keep the louver tight around the louver guide, especially given the teaching of the present invention that elasticity could be used to adjust the tension or

tightness of the louver 2 around the guide.

The kinematics between the selector lever 8 and the transmission can be any of a plurality of different types of prior art kinematics. The existence of many vehicles with kinematics between a selection lever and a transmission shows the level of skill in the art to be sufficient for a person of ordinary skill to provide kinematics without further information from the present application. It is therefore not a purpose of the present application to describe kinematics, but instead to have the present invention work with existing kinematics.

The present invention is thus able to provide protection, and a visual pleasing surface around, the kinematics between a selection lever and a transmission. The present invention still allows movement of the selection lever in a very compact, efficient and visually pleasing manner.

#### VI. CONCISE STATEMENT OF ALL ISSUES PRESENTED FOR REVIEW

(1) Whether claims 18 - 21, 24, 26 - 29, 31, 36, and 37 are unpatentable under 35 USC § 102 by Andronis.

(2) Whether claims 18 - 33 and 35 - 38 are unpatentable under 35 USC § 112 second paragraph as being indefinite.

(3) Whether claims 18 - 33, 35 and 38 are unpatentable under 35 USC § 112 first paragraph as having possession of the claimed invention.

(4) Whether the specification fails to provide proper antecedent basis for the “a first direction” and “a second direction” in claim 36 under 37 CFR 1.75(d)(1).

(5) Whether the proposed drawing corrections filed on December 26, 2002 are new matter.

(6) Whether the drawings require correction under 35 CFR 1.84 and 1.83(a).

## VII. GROUPING OF CLAIMS

Applicant asserts that each of claims 18 - 33 and 35 - 38 are separately patentable.

## VIII. ARGUMENT

### Issue 1

Whether claims 18 - 21, 24, 26 - 29, 31, 36, and 37 are unpatentable under 35 USC § 102 by Andronis.

The order of the issues presented in this Appeal Brief differs from the order of the issues in the Final Office Action of March 11, 2002. Applicant has rearranged the order to place the more significant issues first, in accordance with Applicant's interpretation of the issues.

Applicant wishes to thank the Examiner for the telephone interviews which concentrated on this issue. Applicant also thanks the Examiner for sharing the translation of the Andronis reference.

It is Applicant's position that a better understanding of the Andronis reference, especially with regard to independent claim 36, should overcome the rejection, at least with regard to claim 36. Applicant is hopeful that this will then make it easier to overcome the remaining rejections, or amend the claims to overcome the remaining rejections.

Claim 36 sets forth a louver guide and a louver movably connected to the louver guide in a first direction. The rejection equates elements 14, 15 and 38 - 46 with the lower guide, and element 3 with the louver of claim 36. Applicant notes that element 3 is described in Andronis as a selector lever gap or opening. Therefore element 3 itself is not similar to the louver of the present invention.

Element 38 of Andronis is equated with the louver guide of claim 36. Andronis describes element 38 as a gap covering element in the abstract, and as a band in column 6 line 60. Band or cover element 38 of Andronis is not similar to the louver guide of the present invention.

If element 38 of Andronis was equated with the louver of claim 26, then element 38 of Andronis would not be movably connected to elements 14 and 15, in the same relationship as the louver and louver guide in claim 36. Element 14 appears to be fixed to element 38 or 44, and therefore does not have the movable feature. Element 14 therefore cannot be similar to the louver guide of claim 36.

Element 15 appears to be linearly fixed to elements 14 and 38/44. Therefore element 15 is not movable in a first direction with respect to element 38 in Andronis.

Elements 38/44 appear to be movable with respect to elements 39 - 42 in one direction. Element 15 appears to be movable with respect to elements 38/44, but not in the same direction. Therefore all of elements 15 and 39 - 42 of Andronis cannot be similar to the louver guide of claim 36.

Claim 36 also sets forth that the louver guide is movably connected to the cover in a

second direction. Applicant thanks the Examiner for providing the exhibit in the Final Office Action indicating the first and second directions of Andronis. Applicant assumes that the second direction in Figure 4 of Andronis is into the paper.

The rejection relates element 2 of Andronis with the cover of claim 36. Applicant has reviewed Andronis, and notes that elements 39 - 42 are not movably connected with respect to element 2.

Figure 4 of Andronis is discussed in the translation on page 7 in the last three paragraphs. Elements 39 through 42 of Andronis are described as guide elements or guide rods. Applicant finds no teaching nor suggestion in Andronis of elements 39 - 42 being movable with respect to a cover. Applicant notes that the rejection equates element 2 of Andronis with the cover of the present application.

Andronis also does not indicate whether elements 39 through 42 are rotatable when the flexible band 38 or 44 is moved in the transverse shifting path 10. Andronis however does indicate in the very last sentence on page 7 that the band 38 or 44 is also pushed to slide in the direction of the longitudinal shifting path 14 via guide rods 39 - 42. Applicant notes that the phrase "longitudinal shifting path 14" appears to be incorrect, since element 14 is previously described as a bearing cage 14, and the longitudinal shifting path has previously been set forth in the last line on page 5 of the translation as having reference 13. It is Applicant's understanding that the longitudinal shifting path in Figure 4 would be in and out of the page, and that band 38 or 44 slides on elements 39 - 42. Therefore elements 39 - 42 do not move with respect to element 2 which has been equated with the cover of the present invention.



Applicant further notes that the translation describes on page 3 lines 12 - 13 that the guide elements are preferably designed integral with the cowling, for example, made from one piece by injection molding. This would lead a person away from making guide elements, such as elements 39 - 42, movably connected to a cover. Therefore the movable connection between the louver guide and the cover in claim 36 would not be obvious in view of Andronis.

In the Interview Summary the Examiner states that because Andronis' Figure 4 shows that when the lever 6, 16 is moved, the elements 14 and 15 are moved therewith, consequently, the other elements 39 - 42 are also moved therewith. Applicant finds no indication in Andronis that movement of elements 6, 14, 15 or 16 requires that the other elements 39 - 42 are also moved therewith. Claim 36 therefore further defines over Andronis.

One of the preferred connections between the louver guide and the cover, is for the selector lever 8 to support the louver and louver guide as shown in Figure 6 and described in the specification on page 9 line 20 to page 10 line 1. Another possible connection between the louver guide and the cover is with a bracket between the louver guide and the cover, page 9 line 26 - page 10, line 1. Further details of a possible bracket are described on page 10, lines 2 - 5. Of course these described connections are not the only possible movable connection between the louver guide and the cover. Another possible connection would be to fix the cover to the frame of the vehicle and movably mount the guide to the frame. The connection would then be an indirect connection. Applicant notes that claim 36 has been purposely written to broadly cover the connections described in the drawings and specification, and equivalents thereof.

The Advisory Action of August 29, 2002 indicates that Applicant's contention about

the elements 7 and 8 of Figure 2 of Andronis is unpersuasive because the rejections based on Figures 4 - 7 of Andronis. As Applicant has described above, the portions of Andronis which relate to Figures 4 - 7 are sparse with regard to details of a louver guide being movable with respect to a cover plate, and therefore cannot anticipate this movable feature of claim 36. If the remaining portions of Andronis are considered, the person of ordinary skill would be led further away from this movable feature.

Applicant has reviewed these remaining portions of Andronis, and finds it to be informative with regard to the structure of Andronis. In particular Applicant notes that Andronis describes a shell element 4 in Figures 1 - 3. This shell element 4 is described in the translation on page 6 line 7 as being guided through guide slot 9. Guide slot 9 is formed between the guide element top 7 and the guide element bottom 8, page 6 lines 6 - 7. As is clear from Figure 2 of Andronis, shell element 4 slides between elements 7 and 8. The translation on page 6 line 20 indicates that the shell element 4 is pushed into one of the free spaces 12. It is quite clear than that elements 7 and 8 are stationary and element 4 slides between them.

A similar scenario is present in Figure 3 where guide elements 22 include a guide element top 23 and a guide element bottom 24. The slot cover element is designed as a flexible flat part 20, and the translation indicates that flat part 20 can be moved into one of the free spaces 12, page 6 line 32. A person of ordinary skill in the art would easily see that the flat part 20 and the edges 21 slide in between elements 24 and 23.

In the Interview Summary, the Examiner contends that Applicant's contention is relied on the intended use statement or the mode of operation of the device. Applicant notes that

claim 36 sets forth that the louver guide is connected to the cover plate and that the type of connection is a movable connection. It is Applicant's position that this does not set forth an intended use or a mode of operation of the device, but instead specifically describes the type of connection between the louver guide and the cover plate. This structure is clearly not present in Andronis.

Applicant wishes to point out that, to the extent any process limitations distinguish a product over the prior art, such process limitations must be given the same consideration as traditional product characteristics. In the present application, Applicant has highlighted the structural features of the connection between the cover plate and the louver guide. These features of the invention (whether categorized as process or structure) must be considered. See *In Re Luck and*, 476 F. 2d 650, 177 U.S.P.Q. 523 (CCPA 1973).

Claim 36 therefore cannot be considered obvious in view of Andronis.

Claim 37 has also been rejected as being anticipated by Andronis. Applicant notes that claim 37 has a typographical error in that the dependency from claim A was typed when the dependency should have been typed as claim 36. The rejection appears to understand this in that the rejection states that Andronis has a first and second direction in a plane as set forth in claim 37. Applicant notes that the first and second directions shown in the Exhibit do not correspond to the first and second directions in claim 36. The louver and louver guide in claim 36 set forth as being movable in the first and second directions does not correspond to any structure in Andronis which moves in the first and second directions as indicated in the Exhibit. According to the present interpretation of Andronis with respect to claim 36, claim 37 would

stand or fall together with claim 36. However should Andronis be interpreted differently, and/or different in supporting statements being used for rejecting claim 36, claim 37 could then further define over Andronis.

Claim 18 sets forth a movable louver and a louver guide for guiding the movable louver. The louver guide is set forth as being movable in relation to a cover plate at right angles to the direction of movement of the louver with respect to the louver guide. As described above with regard to claim 36, Andronis does not teach nor suggest any structure similar to a louver guide which is movable in relation to a cover plate at right angles to a direction of movement of a louver with respect to a louver guide. Claim 18 therefore also defines over Andronis.

Claim 26 sets forth that the louver guide includes a support structure and that the deflecting element is mounted elastically to the support structure. The rejection equates element 44 of Andronis with the support structure of claim 26. Applicant notes that element 44 in Andronis is described as a flexible band 44, and is therefore not similar to a support structure of a louver guide. Therefore claim 26 further defines over Andronis.

Claim 27 sets forth that the louver comprises an elastic louver portion having elastic properties. The rejection states that the vertical portion in the exhibit has elastic properties. However Applicant has found no teaching nor suggestion of this in the specification of Andronis, and finds no indication in Figure 4 of Andronis that a portion would be elastic. Claim 27 therefore further defines over Andronis.

Claim 29 sets forth that the louver guide includes a support structure. The rejection with regard to claim 29 equates element 44 of Andronis with the support structure of claim 29.

As Applicant has described above, element 44 of Andronis is a band, and is not a support structure. This is especially true with regard to a support structure with slide rails as further set forth in claim 29. Claim 29 therefore further defines over Andronis.

For all of the above reasons, the Board is respectfully requested to overrule the Examiner's rejection with regard to Andronis.

#### Issue 2

Whether claims 18 - 33 and 35 - 38 are unpatentable under 35 USC § 112 second paragraph as being indefinite.

Claim 36 sets forth first and second directions. The rejection questions which directions define the first and second directions in claim 36. Applicant notes that claim 36 sets forth that the louver is movably connected to the louver guide in a first direction. In the embodiment of the drawings, the first direction is shown in Figure 2 as the right and left direction. The actual direction of the first direction as set forth in claim 36 is immaterial at the point that the first direction is recited, since there is insufficient structure previously cited in the claim for which to reference the first direction to. The first direction at this point in the claim could be any direction. Applicant notes that the first direction is limited further on in the claim. Applicant acknowledges that this causes the first direction to be broadly described. However, the broadness of a description does not cause a claim to be indefinite or vague.

Claim 36 then further sets forth that the second direction is substantially perpendicular to the first direction. The present invention as set forth in claim 36 therefore covers all shifting

slot covers where a louver is movably connected to a louver guide in a first direction and a louver guide is movably connected to a cover plate in a second direction, and where the second direction is substantially perpendicular to the first direction. In the embodiment of Figures 6 and 7, the second direction is substantially between the lower left and the upper right, while the first direction is between the lower right and the upper left. It is Applicant's position that these directions are sufficiently defined, even if they are broad.

Claim 18 has been rejected as being indefinite with regard to which structures define the kinematics. Applicant notes that the kinematics in claim 18 are set forth in the preamble, and therefore are not directly part of the invention. The preamble gives the background or environment of the invention. Further, kinematics between a selector lever and a transmission are well known in the art. Applicant notes that Figure 4 was amended to generally show the kinematics between the selector lever 8 and the transmission. The kinematics were generally shown in the same manner in which it was described in the specification and in the preamble of claim 18. The Final Rejection does not indicate whether or not this amendment to the drawings was acceptable.

Claim 27 was rejected as being indefinite with regard to the elastic louver portion. Applicant attempted to amend the drawings to show an example of an elastic louver portion. The elastic louver portion is described in the specification on page 4 lines 14 - 17. It is Applicant's position that a person of ordinary skill would be able to place an elastic portion in a band based on the teaching of claim 27 and page 4 lines 14 - 17, that a louver comprises an elastic louver portion having elastic properties. It is Applicant's position therefore that the

elastic louver portion is sufficiently described to be understandable to a person of ordinary skill.

Claim 33 sets forth hall sensors and permanent magnets. This is described in the specification on page 5 lines 18 - 20. Hall sensors and permanent magnets are well know, especially for sensing positions. It is Applicant's position that a person of ordinary skill in the art would be readily able to sense positions of a selector lever given the teaching of the present invention to use hall sensors and permanent magnets.

Claims 37 and 38 have been questioned with regard to the dependency on claim 26, since the claims state that they are dependent on claim A and there is no claim A. Applicant confirms that claims 37 and 38 are to depend from claim 36. It appears that the rejection assumes this dependency in the prior art rejection. Applicant tried to amend the dependency of these claims in the August 21, 2002 Amendment. The Advisory Action of August 29, 2002 indicates that the new dependency of claims 37 and 38 raise new issues that would require further consideration and/or search. However Applicant notes that claim 37 has already been considered and searched and rejected as being anticipated by Andronis. Applicant further notes that claim 38 has been indicated to be allowable if rewritten to overcome the rejections under 35 USC § 112 first and second paragraphs. Therefore it appears that the dependency of claims 37 and 38 could be corrected to depend from claim 36 without requiring further consideration and/or search.

For all of the above reasons, the Board is respectfully requested to overrule the Examiner's rejection with regard to Andronis.

### Issue 3

Whether claims 18 - 33, 35 and 38 are unpatentable under 35 USC § 112 first paragraph as having possession of the claimed invention.

The rejection claims that the kinematics in claim 18 is not described in the specification in such a way as to convey to one skilled in the art that the inventor had possession. Applicant notes that kinematics between a selector lever and a transmission are well known and, are in common use. A majority of the vehicles in use today have kinematics that connect a selector lever to a transmission. The present invention does not directly concern the kinematics, but instead provides a cover for shifting device that is connected to the kinematics. A person of ordinary skill in the art would be able to apply the present invention to any of the readily available kinematics. Therefore it is Applicant's position that Applicant had possession of the few features of the kinematics which are related to the shifting device slot cover of the present invention.

Claim 27 is rejected for the inventor not having possession of the elastic louver portion. Elastic bands, or bands with an elastic portion are well within the ability of a person of ordinary skill in the art. Therefore a person of ordinary skill would be led to believe that Applicant had possession of the feature of an elastic louver portion at the time the application was filed.

Claims 32 and 35 are rejected due to the inventor not having possession of the signal transmitters and receivers at the time the application was filed. Applicant notes that at the time the application was filed, signal transmitters and receivers were described in the specification. Signal transmitters and receivers are well known and did exist at the time the application was



filed. The person of ordinary skill would understand that the present application described known signal transmitters and receivers. Therefore the person of ordinary skill would understand that the inventor had possession of these known signal transmitters and receivers at the time the application was filed.

Claim 33 has been rejected as the inventor not having possession of the permanent magnets and Hall sensors at the time the application was filed. Applicant notes that the specification describes permanent magnets and Hall sensors at the time the application was filed. Applicant further notes that permanent magnets and Hall sensors were known by person of ordinary skill to be in existence at the time the application was filed. Furthermore, the person of ordinary skill in the art would know that the permanent magnets and Hall sensors described in the specification correspond to those in existence at the time the application was filed. Therefore a person of ordinary skill in the art would consider the inventor to have possession of permanent magnets and Hall sensors at the time the application was filed.

This rejection under 35 USC § 112 first paragraph indicates that the drawings do not show these claim features. Applicant notes that the inventor can have possession of these features without showing them in the drawings, and that a person of ordinary skill does not necessarily need to see the features shown in the drawings in order to understand that the inventor had possession at the time of filing.

This rejection under 35 USC § 112 first paragraph indicates that claim 38 calls for a bracket and Applicant's original drawings do not show a bracket. Applicant's drawing corrections filed on December 26, 2001 inadvertently indicated that element 15 was the bracket.

Applicant notes that a showing of the bracket was added to Figure 7 at this time with reference numeral 16. At the time the application was filed, the substitute specification stated on page 9 line 20 - page 10 line 5 that the slot cover 1 could be displaceable in relation to the cover plate 6 with a bracket. Brackets for holding one element displaceable with respect to another element were known and existing at the time of filing of this application. A person of ordinary skill would understand that the bracket described in the specification was similar to known brackets for holding one item displaceable with respect to another. Therefore a person of ordinary skill in the art would consider the inventor to have possession of the bracket at the time the application was filed.

For all of the above reasons, the Board is respectfully requested to overrule the Examiner's rejection with regard to Andronis.

#### Issue 4

Whether the specification fails to provide proper antecedent basis for the "a first direction" and "a second direction" in claim 36 under 37 CFR 1.75(d)(1).

Claim 36 sets forth a louver movably connected to a louver guide in a first direction.

The substitute specification states on page 7 line 10 that the louver 2, which forms an endless band, is guided around the deflecting rollers. The specification shows the louver 2.1 - 2.3 to be guided around the deflecting rollers 3 and 4. A person of ordinary skill in the art would understand from Figure 2, that the guiding direction described on page 7 line 10 is to the right and left in Figure 2. It is Applicant's position that a person of ordinary skill would

understand that this provides support for the first direction in claim 36.

Claim 36 also sets forth that the louver guide is movably connected to the cover plate in a second direction and that the second direction is substantially perpendicular to the first direction. The specification describes on page 9 lines 11 - 12 that Figures 6 and 7 show a slot cover 1 which can be displaced as a whole in relation to the cover plate 6 by a sideways movement of the selector lever. Figures 6 and 7 show an arrow at the bottom left which is in the sideways direction, and is perpendicular to the guiding direction of the louver 2 around the support 5. Therefore the specification and figures provide support for the second direction in claim 36.

For all of the above reasons, the Board is respectfully requested to overrule the Examiner's rejection with regard to Andronis.

#### Issue 5

Whether the proposed drawing corrections filed on December 26, 2002 are new matter.

Many of the new matter rejections are made stating that specific features are now shown which were only broadly described in the original specification. Applicant notes that the original specification was written to broadly cover all variations of the features, such as the elastic portion. The elastic portion of the present application can vary in its specific features, such as size, shape and location, and still perform the purpose attributed to the elastic portion by the specification.

It is Applicant's position that to show and describe every possible size, shape and

location of the elastic portion that would fulfill the purpose of the present invention, would be unduly burdensome, especially when applied to every feature of the present invention. Furthermore, it is Applicant's position that such an exhaustive description is not necessary to a person of ordinary skill. The person of ordinary skill would be able to determine a size, shape and location of an elastic portion without undue experimentation. Furthermore, the size, shape and location of an elastic portion would depend on such application specific parameters, such as the desired material of the louver and the desired size of the louver. Determining the size, shape and location of an elastic portion is well within the skill of an ordinary person in the art. Furthermore some experimentation is an unavoidable necessity due to the individual nature of each application.

The rejection cites two court cases as support for the new matter rejection. Applicant has reviewed these court cases, and notes that the case of "Ex Parte George, 203 USPQ" has refused to sustain many of the 112 and new matter rejections.

Applicant further notes that the rejections that were sustained in these court cases were only related to claims. The courts felt that new matter was present when a feature was only broadly described originally, and later narrowly claimed.

This is not the situation in the present application. The changes to the drawings do not, and are not, intended to narrow the claims. Instead the drawings show an embodiment of the features described in the specification and claims. Since the changes to the drawings do not relate to a narrowing of the claims, the court decisions do not support the new matter rejections.

The Office Action comments on elements 15 and 16 in the drawing corrections. Applicant notes that these reference numerals were incorrectly added to the specification in the last Amendment. Element 15 was intended to show the two deflecting axis in the amended paragraph starting on page 6 line 18 and ending on page 7 line 15. Element 16 was intended to show an embodiment of the movable connection between the louver guide and the cover. Applicant has tried to correct the misnumbering in these paragraphs by an amendment.

For all of the above reasons, the Board is respectfully requested to overrule the Examiner's rejection with regard to Andronis.

#### Issue 6

Whether the drawings require correction under 35 CFR 1.84 and 1.83(a).

Applicant has attempted to overcome this objection by adding the features described in the claims. In particular claim 5 was amended to show the plane upon which the sectional view of Figure 4 was taken. The Examiner has indicated that the change to Figure 5 was approved. It is Applicant's position that this correction to Figure 5 should overcome the rejection under paragraph 3(A) of the Final Office Action.

Applicant has also attempted to amend the drawings to show the features described in paragraph 3(B) of the Final Office Action. The Examiner has indicated that these features are new matter, even though these features have been described in the specification and claims. It is Applicant's position that these changes to the drawings are not new matter, and instead represent what was described in the application as originally filed. It is Applicant's position



therefore that the drawing corrections overcome this objection.

For all of the above reasons, the Board is respectfully requested to overrule the Examiner and to indicate allowable subject matter in this application.

Respectfully submitted  
For Applicant,

By: 

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TD:tf  
67526.18

Enclosed: Appendix with Claims  
Duplicate copies of Appeal Brief  
Check for \$320.00

DATED: September 11, 2002  
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BY:  DATE: September 11, 2002

## APPENDIX



18. A motor vehicle transmission shifting device slot cover, the shifting device having a selector lever and kinematics for transmitting the selection movements to a transmission and at least one shift gate, the slot cover comprising:

5 a movable louver which covers the at least one shift gate, said louver having at least one opening for the passage of the selector lever, said louver being an endless band forming a closed loop;

a louver guide for guiding the movable louver;

a cover plate, said louver guide being moveable in relation to said cover plate at right angles to the direction of movement of the louver with respect to said louver guide.

19. A slot cover in accordance with claim 18, wherein said louver guide has at least one deflecting element.

20. A slot cover in accordance with claim 19, wherein said at least one said deflecting element has a curved deflecting surface.

21. A slot cover in accordance with claim 20, wherein said at least one said deflecting element is one of a pulley having a deflecting axis and a deflecting shaft.

22. A slot cover in accordance with claim 20, wherein the deflecting element is a continuous rotating deflecting roller which has a gear at its edge.

23. A slot cover in accordance with claim 20, wherein said deflecting element comprises two coaxially mounted deflecting rollers which are separated from one another and have elevated edge beads.

24. A slot cover in accordance with claim 20, wherein said deflecting element is arranged within said louver closed loop.

25. A slot cover in accordance with claim 20, said deflecting element is arranged outside said louver loop.

26. A slot cover in accordance with claim 20, wherein said louver guide includes a support structure, said deflecting element being mounted elastically to said support structure.

27. A slot cover in accordance with claim 18, wherein said louver comprises an elastic louver portion having elastic properties, at least in the circumferential direction of the closed loop, said elastic louver portion being provided over at least a part of a length of said louver.

28. A slot cover in accordance with claim 18, wherein said louver comprises a plurality



of parts.

29. A slot cover in accordance with claim 18, wherein said louver guide includes a support structure with slide rails arranged laterally and engaged by said louver for guiding said louver.

30. A slot cover in accordance with claim 18, wherein said louver has two openings, through which the selector lever passes.

31. A slot cover in accordance with claim 18, further comprising:  
a cover plate with the shift gate provided for the selector lever.

32. A slot cover in accordance with claim 18, further comprising:  
signal transmitters;  
signal receivers, signals of said signal transmitters being detected by signal receivers arranged at spaced locations from said signal transmitters, arranged on the deflecting elements for detecting the shift positions of the selector lever.

33. A slot cover in accordance with claim 32, wherein signal transmitters include permanent magnets and said signal receivers are hall sensors, shift positions being detected by means of said Hall sensors and permanent magnets associated with said signal transmitters, wherein a pair of measured values is correspondingly assigned to each shift position.

35. A motor vehicle transmission shifting device slot cover, the shifting device having a selector lever and at least one shift gate, the slot cover comprising:

a movable louver which covers the at least one shift gate, said louver having at least one opening for the passage of the selector lever, said louver being an endless band forming a closed loop;

a louver guide for guiding the movable louver, said louver guide including a deflection element;

a signal transmitter mounted on said deflection element;

a signal receiver arranged at a spaced location from the said signal transmitter, a signal of said signal transmitter being detectable by said signal receiver for detecting shift positions of the shifting device.

36. A shifting device slot cover comprising:

a louver guide;

a louver movably connected to said louver guide in a first direction, said louver including an endless band forming a closed loop, said louver defining a selector lever opening.;

a cover plate, said louver guide being movably connected to said cover plate in a second direction, said second direction being substantially perpendicular to said first direction.

37. A cover in accordance with claim A, wherein:  
said first and second directions are in a plane substantially parallel to a plane of said cover plate.

38. A cover in accordance with claim A, wherein:  
said louver guide is movably connected to said cover plate in said second direction by a bracket.